

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ARTURO CHAIREZ,

Petitioner,

v.

M. ADAMS, Warden,

Respondent.

No. C 07-5767 MMC (PR)

**ORDER DENYING MOTION FOR
RECONSIDERATION AS
PREMATURE; SETTING NEW
BRIEFING SCHEDULE ON
PENDING MOTION TO DISMISS;
DENYING MOTION FOR
APPOINTMENT OF COUNSEL**

(Docket Nos. 7 & 11)

Before the Court are petitioner's motion for reconsideration and motion for appointment of counsel. For the following reasons, the motions will be denied and the Court will set a revised briefing schedule on respondent's motion to dismiss.

On November 14, 2007, petitioner, a California prisoner proceeding pro se, filed the above-titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On April 11, 2008, the Court ordered respondent to show cause why the petition should not be granted; also in said order, the Court set a briefing schedule by which, inter alia, any motion to dismiss was to be filed by respondent within 90 days of the filing of said order and petitioner's opposition or statement of non-opposition to such motion was to be filed within 30 days thereafter. On July 16, 2008, respondent filed a motion to dismiss the petition as untimely. Petitioner did not file a response thereto. Rather, on August 6, 2008, petitioner filed a motion for reconsideration, by which he asks the Court to reconsider its dismissal of the above-titled action in light of the fact that petitioner, for various reasons, did not have an adequate opportunity to respond to the motion to dismiss. Petitioner's motion for

1 reconsideration is premature, as respondent's motion to dismiss is still pending and no order
2 of dismissal has been entered in this matter.

3 Accordingly, Petitioner's motion for reconsideration is hereby DENIED.

4 Good cause appearing, however, the Court hereby SETS the following revised
5 briefing schedule.

6 1. Petitioner shall file with the Court and serve on respondent his opposition or
7 statement of non-opposition to respondent's motion to dismiss within **thirty (30)** days of the
8 date this order is filed.

9 2. If petitioner files an opposition, respondent shall file a reply thereto within
10 **fourteen (14)** days of the date the opposition is filed.

11 3. The motion shall be deemed submitted as of the date the reply brief is due. No
12 hearing will be held on the motion unless the Court so orders at a later date.

13 As noted, petitioner also moves for appointment of counsel. The Sixth Amendment's
14 right to counsel does not apply in habeas actions. Knaubert v. Goldsmith, 791 F.2d 722, 728
15 (9th Cir.), cert. denied, 479 U.S. 867 (1986). Pursuant to statute, however, a district court is
16 authorized to appoint counsel to represent a habeas petitioner whenever "the court determines
17 that the interests of justice so require and such person is financially unable to obtain
18 representation." See 18 U.S.C. § 3006A(a)(2)(B). Here, petitioner's claims have been
19 adequately presented in the petition and no other grounds exist that would require the
20 appointment of counsel at this time.

21 Accordingly, as the interests of justice do not require appointment of counsel,
22 petitioner's motion is hereby DENIED.

23 This order terminates Docket Nos. 7 and 11.

24 IT IS SO ORDERED.

25 DATED: October 29, 2008

26 
27 MAXINE M. CHESNEY
28 United States District Judge